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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,190	01/23/2004	Peter Fyler Lynch	9495	8071
27752 7590 03/18/2009 THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202				
EXAMINER				
QUINN, COLLEEN M				
ART UNIT		PAPER NUMBER		
3634				
MAIL DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/764,190

Applicant(s)

LYNCH, PETER FYLER

Examiner

COLLEEN M. QUINN

Art Unit

3634

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-12, 17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-12, 17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4-12, 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention.

In regard to claim 1 the scope of the claim is unclear. The preamble of the claim merely sets forth a "shelf display apparatus". The preamble does not positively claim the shelf in combination with the display apparatus. However, the body of the currently amended claim 1 now claims the "apparatus comprising a shelf having at least one shelf surface member lying along a substantially horizontal place.". This language positively claims the shelf in combination with the display apparatus. Thus, the claim will be treated for the combination of the shelf and the display apparatus until further clarification is provided.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, 7-9, 11, 12, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niece (US 4,023,682) in view of Harris (US 4,143,845).

Niece discloses a shelf display apparatus for storing packages (figure 1), said apparatus comprising: a shelf having at least one shelf surface member (22, 22', 24) lying along a substantially horizontal plane (figure 1); a first vertical support member (14) having a first lower end, wherein said first lower end is engageable to the shelf surface member at a first engagement location (figure 1) such that movement of the of the first lower end is blocked in at least one direction (col. 2, line 62- col. 3, line15) ; a second vertical support member (14) having a second lower end, wherein said second lower end is engageable to the shelf surface member at a second engagement location (figure 1) such that movement of the of the second lower end is blocked in at least one direction (col. 2, line 62- col. 3, line15) ; wherein said first and second engagement locations are spaced apart from each other along a first line in the horizontal plane, the movement of the first and second lower ends relative to the shelf surface member in a direction perpendicular to the first line blocked (col. 2, line 62- col. 3, line15); and a top support member (12) having fist and second top support member ends (opposite ends of 12) and a length therebetween; the first and second top support member ends, being joined to the first and second vertical members respectively (figure 1), wherein the top support member, said first vertical support member and said second vertical support member together provide structural support for storing packages in a substantially vertical orientation on a shelf (figure 1); wherein the apparatus further comprises first (16, 18) and second (16,18) fastening mechanisms, said first and second fastening mechanisms being joined to said first and second lower ends of said first and second vertical support members respectively (figure 1), each fastening mechanism connectable to a shelf in

the first plane (figures 1 & 2), and wherein each fastening mechanism is a U-shaped bracket/ engaging member that extends through a receiving area (slots between 24) of the horizontal plane (figures 1 & 2) capable of providing display of product information. Niece fails to disclose the top horizontal member to comprise a continuously non-linear portion

However, Harris teaches a shelf display apparatus (figure 7; 66A) for storing articles wherein the apparatus comprises two spaced apart vertical members (70A, 72A) solely connected by a top horizontal member (86) wherein the top horizontal member has a continuously nonlinear portion for the length of the top support member (figure 7) and wherein said continuously non-linear portion consists of curved portions (figure 7) extending in one or more directions away from a connecting line that extends between the two vertical members (figure 7), providing an aesthetically pleasing alternatively shaped shelving support intended to support a variety of , and not necessarily flat articles (col. 5, lines 41-43), on display.

Therefore it would have been obvious to one ordinary skill in the art to provide the apparatus of Niece with a non-linear top horizontal member as taught by Harris in order to provide an aesthetically pleasing alternatively shaped shelving support intended to support a variety of different shaped articles and that is easy to assemble and is economical to construct (col. 1, lines 24-30).

Claims 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niece and Harris as applied to claims 1, 4,5, 7-9, 11, 12, 17 and 18 above, and further

in view of Heroy (US 3,669,278). Neither Niece nor Harris disclose a fastening mechanism including a plate with a fastener that extends through a shelf in the first plane.

However, Heroy teaches a shelf display apparatus (figure 1) for supporting articles, the apparatus comprising connected and spaced apart vertical members (14) connected to a shelf via fastening mechanisms (figures 1 and 4-6) at the bottom of the spaced apart vertical members, the fastening mechanisms comprising a bottom plate (16) and at least one fastener (24) wherein the bottom plate is connectable to the shelf (figure 1) and the fastener can securely join the plate to the shelf (figure 3), providing an easily deployed fastening means.

Therefore it would have been obvious to one of ordinary skill in the art to provide the apparatus of Niece with a plate and fastener in the first plane as taught by Heroy in order to provide a secure and easily operated fastening mechanism for securing the vertical members to a shelf.

Response to Arguments

Applicant's arguments filed January 8th, 2009 have been fully considered but they are not persuasive.

The applicant argues that the prior art reference of Niece does not teach engageable members that are blocked from movement in at least one direction along the shelf, specifically lateral movement. The applicant argued that the engageable members of Niece can move in a direction perpendicular to the line between

engagement members, and inserted an edited image of Niece suggesting such movement. However, this argument and the annotated image are both incorrect since Niece very clearly explains in his specification (col. 2, line 62- col. 3, line15) that the members engaging the shelf plane are designed to prevent any forward, rearward or lateral (perpendicular) movement of device. Therefore, the applicant's assertion that the device of Niece does not block perpendicular movement is not persuasive.

The applicant also argues that the device of Harris bears no relationship to the problem addressed by the applicant. The applicant also argues that the curved plane of Harris is a bottom support and the applicant is claiming a top support. The examiner is not persuaded by these arguments since Harris is indeed related to the applicant's field of art--- both Harris and the applicant's claimed invention are directed to wire-formed article supporting devices intended to be attached to a shelf for the purpose of supporting alternatively shaped articles. Additionally the argument that the curved portion of Harris is a bottom support and the applicant is claiming a top support is not persuasive since the device is certainly capable of being rotated and attached in any orientation, even sideways if so desired.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLLEEN M. QUINN whose telephone number is (571)272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571) 272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KATHERINE W MITCHELL/
Supervisory Patent Examiner, Art Unit 3634

/C. M. Q./
Examiner, Art Unit 3634